Md. Hashim was represented on the hearing of this Summons on the 5th December 1932 and did not oppose the application for the appointment of Karima as committee.

Subsequently Md. Hashim appealed from the order of the Judge in Chambers upon various grounds. The only ground considered by the Court of Appeal was the question of whether the order of the 10th October 1932 directing the Registrar to report who was a fit and proper person to be appointed committee was valid or not.

Conaghan for the appellant.

Pooley for the Respondent.

Cur. ad. Vult.

Murison, C. J.:—In this case the learned Judge made an order directing the Registrar to inquire and report as to "who is a fit and proper person to be appointed" Committee of a lunatic.

Now Sec. 815 (1) of the Civil Procedure Code sets out exactly in what matters such an order can be made. To report who is a fit and proper person etc. is not one of them.

In my opinion the order was not correctly made and it in effect delegated to the Registrar the power to select the person who he thought was a fit and proper person, whereas as I read sec. 815 the whole scheme of the section is that while the Registrar prepares the materials upon which fitness is to be judged it is the Judge only who has the power to say who is fit and proper.

I may add that I accept Mr. Van Someren's statement on page 687 top as to the effect of section 1008 f the Code.

I would allow the appeal and remit the case back to the trial Judge to make such order as to enquiries as he thinks fit with a view to ultimate appointment by himself. We make no order as to costs. The deposit of $250-, goes back to the appellant or his Solicitor.

Burton, J.—I concur.

Whitley, J.—I concur

Appeal allowed.

Solicitors for Appellant—*Wreford & Thornton.*

Solicitors for Respondent— *Presgrave & Matthews.*

(Original Civil Jurisdiction)

Murison C. J,

October 14, 1932.

In the Matter of Section 62 (2) of the Civil Procedure Code

and

In the Matter of District Court Summons No. 5101 of 1932

F. HOMMES & CO., LTD.....Applicants

vs.

BRASSERIE DU PHENIX.....Respondents

(Singapore Originating Summons No. 163 of 1932.)

Practice—jurisdiction—judgment entered on District Court claim—counterclaim—excess of jurisdiction—transfer of case to Supreme Court—necessity of notice of counterclaim—Courts Ordinance. S. 32; Civil Procedure Code, S. 1184 (1).

Where the defendants, against whom judgment had been entered for the amount claimed in the District Court, applied to have the proceedings transferred to the Supreme Court on the ground that they had a counterclaim involving an amount exceeding that which the District Court had jurisdiction to award, but no notice of the counterclaim was given and it was not proved that the subject-matter of the counterclaim was sufficiently connected with the claim in the District Court:—

Held, that the application for transfer of the proceedings to the superior Court must be set aside.

Originating Summons heard before Murison, C. J. on the 14th October 1932.

The respondents through their local attorneys took proceedings in District Court Summons No. 5101 of 1932 against the applicants for the recovery of the amount due on a bill of exchange drawn by the respondents in favour of the "Banque Belge pour L'Etranger" endorsed by the payee Bank to the Chartered Bank of India, Australia and China accepted generally by the applicants and dishonoured for non-payment. The authority conferred on the attorneys was confined to collection of the amount due on the bill. Judgment was entered for the respondents in the proceedings on the 5th September 1932. The applicants applied to the Supreme Court for transfer of the proceedings to that Court on the grounds that they had a counterclaim against the respondents for damages for breach of contract and that such damages exceeded in value the sum of $500 being an amount in excess of the jurisdiction of the District Court. No notice of the alleged counterclaim was given to the respondents. The originating summons was served by substituted service

Dunderdale, for the Applicants.

Vaux, for the Respondents.

Vaux for the respondents. The Originating Summons should be set aside. A written notice of the counterclaim is necessary. (S. 1184 (1) of the Civil Procedure Code.) This has not been given. The action in the District Court is *res judicata.* The claim

in the District Court on the bill of exchange was admitted. See Annual Practice, for 1932 p. 193, and also *H. Abdul Shukoor* v. *Mohamed Kassim*, (1927), S. S. L. R. 67. Substituted service should not be allowed.

Dunderdale, for the applicants relied upon S. 62 (1) of the Civil Procedure Code and *Shephards & Co.*, v. *Wilkinson*, 6 T. L. R. 13. As to notice it only applies where counterclaim is within the jurisdiction of the District Court. As to service, the power of attorney granted to the respondents is limited to proceedings on the bill of exchange. As to *res judicata* he relied upon section 62 of the Civil Procedure Code. Counterclaim cannot be filed.

Murison, C. J. made the following order:—

In my opinion where there is a counterclaim in the District Court and it exceeds the jurisdiction of that Court notice must be given (even if the counterclaim is not definitely filed) so that the action can, after disposal of the plaintiff's claim, be kept alive for transfer to the Supreme Court. As no notice was given in this case I must conclude that the action is *res judicata*. There is nothing to transfer.

Further I am not satisfied that the counterclaim was proved to be sufficiently connected with the claim. I follow on this point what I said in *H. Abdul Shukoor* v. *Mohamed Kassim*, (1927) S. S. L. R. 67.

There will therefore be an order in terms.

Order accordingly.

Solicitors for the Applicants .. *Sisson & Delay.*

Solicitors for the Respondents .. *Rodyk & Davidson.*

(Original Civil Jurisdiction)

Terrell, J.

November 30, 1932.

YEO CHIANG SWEE.....Plaintiff

vs.

UNITED DECORATORS.....Defendants

And in the Matter of an Issue ordered To Be Tried.

SHUN FAH & CO.....Plaintiffs

and

the said YEO CHIANG SWEE trading as SENG HUA SAWMILL CO...Defendant

(Singapore Suit No. 128 of 1932.)

Execution—garnishment—money in Sheriff's hands—rival claims between judgment creditor and third party—Government Contract—Assignment of benefit of Contract to third party.

Where a judgment debtor had before judgment assigned the benefit of a contract to another and the money payable under the contract was afterwards paid to the Sheriff under a Notice of Garnishment, the judgment creditor was not entitled to payment out to him of such moneys, the judgment debtor having parted with his interest therein prior to the date of garnishment notice.

This is the matter of an Issue directed to be tried as between a claimant and a Judgment creditor, the Issue being:—

Whether on the 17th May 1932 the Judgment Debtors the above named United Decorators had any beneficial interest in the sum of $3,500/- which was liable to attachment by the said Yeo Chiang Swee the Execution Creditor, the said sum of $3,500 being money paid by the Senior Executive Engineer, Public Works Department to the Sheriff of the Supreme Court at Singapore under a Notice of Garnishment dated the said 17th May 1932 herein and now in the hands of the Sheriff.

The defendant on the Issue obtained in April 1932 a Judgment against the firm of United Decorators for $1353/- and costs. On the 17th May 1932 he issued a Writ of Seizure and Sale and served a Notice of Garnishment on the Director of the Public Works Department attaching moneys in his hands payable under a Contract dated the 4th May between the Government and the firm of United Decorators.

In April 1931 after the tender by the firm of United Decorators had been accepted by the Government for the execution of the works under the Government Contract, an Agreement was entered into between the claimants Shun Fah & Co., plaintiffs on the Issue and the firm of United Decorators whereby (1) plaintiffs on the Issue agreed to furnish the firm of United Decorators with a sum of $5,000/- in order to enable the latter to make the requisite deposit under the Government Contract, (2) To execute the works under the Government Contract, and (3) To pay $1,000/- to the firm of United Decorators absolutely and in consideration thereof the firm of United Decorators agreed to pay over to the plaintiffs on the Issue all moneys payable under the Government Contract as and when received.

In pursuance of the Agreement the firm of United Decorators wrote a letter dated the 15th April 1931 against which the plaintiffs on the Issue advanced to the firm of United Decorators the $5,000/- for deposit under the Government Contract.

In further pursuance of the Agreement the firm of United Decorators executed a Power of Attorney dated the 2nd day of June 1931 in favour of the plaintiffs on the Issue to enable the latter to collect the moneys under the Government Contract as and when due and payable. On the 10th June 1931 the firm of United Decorators and the plaintiffs on the Issue executed an Agreement embodying the terms previously agreed upon between the parties.

On service of the Garnishment Notice the Director of the Public Works Department paid a sum of $3,500/- to the Sheriff, the said sum of $3,500/- being the balance due and payable under the Government Contract above referred to.

The plaintiffs on the Issue now claim that they are entitled as against the Jugment creditor to the said sum of $3,500/